

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of }  
MCA INC. AND MCA ARTISTS, LTD. }

For Appellants: Donald D. Winn  
Attorney and Tax Manager

For Respondent: Crawford H. Thomas  
Chief Counsel

Wilbur F. Lavelle  
Associate Tax Counsel,

O P I N I O N

These appeals are made pursuant to section 26080.1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in disallowing interest on claims of MCA Inc. and MCA Artists, Ltd., for refund of franchise tax in the amounts of \$17,913.00 and \$11,546.00, respectively, for the income year 1963.

The sole question presented in these appeals is whether the amount refunded to each of the appellants constitutes an "overpayment in respect of any tax" within the meaning of section 26080 of the Revenue and Taxation Code so as to entitle appellants to interest thereon.

Appellants MCA Inc. and MCA Artists, Ltd. (hereafter "MCA" and "MCA Artists," respectively), are Delaware corporations which have been doing business in California since their incorporation in 1958. MCA Artists is a wholly owned subsidiary of MCA. Both appellants, together with other affiliated corporations, are engaged in a unitary business. Net income attributable to California is, therefore, determined by allocating the combined income by a formula method. That portion of the California income attributable to each appellant is then reported on a separate franchise tax return filed on a calendar year basis.

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The due date for the filing of these tax returns for the income year 1963 was March 15, 1964. During the first week of March 1964, an independent public accounting firm, working in conjunction with appellants' personnel, proceeded to estimate the California tax liability of the various MCA companies based upon the information available at that time. It is undisputed that this estimate was made in a good faith effort to determine as accurately as possible the amount of California tax that would ultimately be paid by the various MCA companies, including appellants, with respect to the income year 1963.

On March 13, 1964, appellants requested a three-month extension of time within which to file their respective tax returns and simultaneously remitted the amount of tax estimated to be due for the income year 1963. The remittance from MCA included taxes relative to a number of affiliates not involved in these proceedings; however, the amount of the remittance applicable to MCA was \$436,959.00. The amount received from MCA Artists was \$31,100.00.

Upon subsequent request, the due date for filing the tax returns was further extended to September 15, 1964. On the latter date, returns were filed with respondent and these were accompanied by claims for refund of \$17,913.00 and \$11,546.00 by MCA and MCA Artists, respectively. The claims represented the amount by which the remittance exceeded the actual tax declared on each return. Respondent approved and paid the claims but without interest.

Respondent's position is that where a remittance is made prior to the filing of a tax return and the remittance is in excess of the amount declared as due on the tax return, then the excess does not constitute an "overpayment in respect of any tax" within the meaning of section 26080 and, therefore, no interest should be paid on such excess when refunded. Appellants contend, on the other hand, their remittances to respondent on March 13, 1964, constituted bona fide and orderly discharges of actual liabilities or liabilities reasonably assumed to be imposed by law and, therefore, the excess remitted constituted overpayments in respect of tax.

Section 25401 of the Revenue and Taxation Code provides in part:

- (a) Except as provided in subdivision (b), every taxpayer subject to the tax imposed by this part shall, within two months and 15 days after the close of its income year, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the income year, all such facts as it may by rule, or otherwise, require in order to carry out the provisions of this part.

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Section 25551 of the Revenue and Taxation Code provides:

Except as otherwise provided in this chapter, the tax imposed by this part shall be paid not later than the time fixed for filing the return (determined without regard to any extension of time for filing the return).

Under sections 25401 and 25551, appellants were obligated to pay their taxes on or before the regular due date for filing their returns, i.e., March 15, 1964. No provision allowed any extension of time within which to pay the respective taxes. Failure to pay their taxes on or before the due date would have subjected the taxpayers to an interest charge of 6 percent from the due date to the date of payment. (Rev. & Tax. Code, § 25901.)

Section 26080 of the Revenue and Taxation Code provides in part:

Interest shall be allowed and paid upon any overpayment in respect of any tax, at the rate of 6 percent per annum ....

Section 26080.2 of the Revenue and Taxation Code provides:

A payment not made incident to a bona fide and orderly discharge of an actual liability or one reasonably assumed to be imposed by law, is not an overpayment for the purposes of Section 26080 and interest is not payable thereon.

On the face of this matter, it would appear that each of the payments in question was incident to a bona fide and orderly discharge of an actual liability or one reasonably assumed to be imposed by law, and that interest is therefore due to appellants. The tax was specifically required by statute to be paid in advance of the extended due date of the return, and it is undisputed that a good faith effort was made to estimate the amount due. Respondent contends, however, that no overpayment exists and no interest is allowable unless the payment is made pursuant to a return or an assessment. It relies upon the legislative history and judicial construction of a federal income tax statute,

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**Section- 26080** is substantially the same as section 6611(a) of the Internal Revenue Code of 1954. A federal provision which is somewhat analogous to section 26080.2 is section 6401(c) of the Internal Revenue Code of 1954 (formerly section 3770(c) of the Internal Revenue Code of 1939) which provides:

An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

The legislative history of section 3770(c) does not, in our opinion, establish that a return or an assessment is a prerequisite to an overpayment. Section 3770(c) was added to the Internal Revenue Code of 1939 by the Current Tax Payment Act of 1943. Respondent has quoted the following committee report, explaining the bill which added that section:

The income'-tax law requires the taxpayer to make a return of his tax and to pay the tax so returned. These requirements contemplate that in the discharge of these duties at the time, place, and manner prescribed, honest mistakes will occur -- mistakes both as to the amount of the tax and as to the existence of any tax liability; and that such 'honest mistakes made incident to the bona fide orderly compliance with the actual. or reasonably apparent duties of the taxpayer are to be corrected under the provisions of law governing overpayments. It is believed that existing law so provides. The language of certain court decisions (holding that certain payments, not made incident to a bona fide and orderly discharge of actual. or reasonably apparent duties imposed by law, are not overpayments and accordingly that interest is not payable) has been read by some as meaning that no payment can result in an overpayment if no tax liability actually existed. It is not believed that such reading is in any way a statement of existing law. The provisions of the bill, however, emphasize the need for clarity in this regard.

Under the bill as passed by the Senate,, two requirements become basic features of

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the income tax: (1) The declaration and payment of the estimated tax; and (2) the withholding *and* collection by the employer of tax from the wages of employees, and the return and payment as such of the amount by the employer to the Government. Honest mistakes incident to faithful and orderly compliance will, of course, occur, just as they have in the older procedures of the tax. *The doubts expressed as to the* existence of an overpayment in case it ultimately turns out that there is no tax, it is believed should be put to rest, and to this end the amendment to section 3770 of the code was inserted in the Senate bill. It is thought that the code does not contemplate that liability for interest can be cast on the Government by merely dumping money as taxes on the collector, by disorderly remittances to him of amounts not computed in pursuance of *the actual or* reasonably apparent requirements of the code, or not transmitted in accordance with the procedures set up by the code, or by other abuses of tax administration. As to these, a proper application *or* existing law will enable the courts, in the future as generally in the past, to deny treatment as overpayments to these improper payments. (H.R. Conf. Rep. No. 510, 78th Cong., 1st Sess., p. 48 (1943).)

This report is, at best, inconclusive on the issue before us, *The case law* existing at the time the report was prepared could reasonably have been construed to permit interest with respect to a payment required **by** law, regardless of whether the payment was made pursuant to a return or an assessment. (See Moses v. United States, 28 F. Supp. 817; Atlantic Oil Producing Co. v. United States, 35 F. Supp. 766; and Busser v. United States, 130 F.2d 537.)

Respondent has cited a number of decisions in support of its position. It relies primarily upon Rosenman v. United States, 323 U.S. 658 [89 L. Ed. 535]; Busser v. United States, *supra*, and Murphy v. United States, 78 F. Supp. 230. We do not believe these cases are controlling in the present matter because (1) the state and federal statutory provisions differ, and (2) the fact situations are distinguishable in varying degrees. For example, in Rosenman v. United States, *supra*, the taxpayer made a deposit with the Collector of Internal Revenue and specified that it was being "made under protest and duress, and solely for the purpose

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of avoiding penalties and interest, since it is contended by the executors that not all of this sum is legally or lawfully due." The Supreme Court of the United States noted that "the taxpayer did not discharge what he deemed a liability nor pay one that was asserted." In Busser v. United States, supra, 130 F. 2d 537, an extension of time to file an estate tax return was granted; however, a remittance was made prior to the original due date for payment of the tax. The court stated that the time for tax settlement had been extended and that the remittance was entirely voluntary. This case seemed to turn on the premise that no tax was due at the time the remittance was made. In Murphy v. United States, supra, 78 F. Supp. 236, \$90,000 was delivered to the collector in anticipation of a deficiency assessment. Although the court stated that section 3770(c) did not change the "existing law" that a return or assessment was a prerequisite to an overpayment, that statement is colored by the fact that the remittance was entirely voluntary.

In situations virtually identical to the present matter, the Court of Claims has taken a position contrary to that of respondent. In Hanley v. United States, 63 F. Supp. 73, that court considered a case where the time for filing an estate tax return was extended but the taxpayer was required to pay the taxes estimated to be due. Under those circumstances, the Court of Claims held that such a remittance based upon a bona fide estimate of tax then due constituted a payment of tax and the taxpayer was entitled to interest on the overpayment. At least one other federal court has indicated that the critical consideration is whether the remittance was required by law. (United States v. Killer, 315 F.2d 354, cert. denied, 375 U.S. 824 [11 L. Ed. 2d 57].)

In the case before us, MC4 and MCA Artists made payments in good faith in an honest effort to discharge their respective tax liabilities at the time required by law. The language of section 26080.2, in itself, leads to a conclusion that appellants are entitled to interest, and the federal authorities which we have considered do not compel a different conclusion. Accordingly, it is our opinion that appellants must be allowed the interest which they claim.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26080.1 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in disallowing interest on claim of MCA Inc. and MCA Artists, Ltd., for refund of franchise tax in the amounts of \$17,913.00 and \$11,546.00, respectively, for the income year 1963, be and the same is hereby reversed.

Done at Sacramento, California, this 7th day of March, 1967, by the State Board of Equalization.

Paul R. Leake, Chairman  
John W. Lynch, Member  
Robert H. Hain, Member  
Robert H. Hain, Member  
Robert H. Hain, Member

Attest:

[Signature], Secretary